

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
CASE NO. 1:16-CV-00288

RACING OPTICS, INC.                     )  
                                                  )  
                  Plaintiff                     )  
          v.                                     )  
                                                  )  
CLEAR DEFENSE, LLC.                     )  
                                                  )  
                  Defendant                     )

**JOINT RULE 26(f) REPORT AND PROPOSED DISCOVERY PLAN**

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), the parties conferred on September 8, 2016 with Michael J. Krautner and Gilbert J. Andia, Jr. representing Racing Optics, Inc. and Peter Siddoway representing Clear Defense, LLC, who have conferred and jointly propose this Rule 26(f) Report.

2. Discovery plan. The undersigned parties propose to the court the following discovery plan:

a. Discovery will be needed upon the Plaintiff's complaints of patent infringement, and Defendant's defenses and counterclaims of non-infringement and invalidity.

b. Discovery shall be placed on a case-management track established in LR26.1. The undersigned party proposes that the appropriate plan for this case (with any stipulated modification by the parties as set out below) is that designated in LR 26.1(a) as:

Standard \_\_\_\_\_  
Complex \_\_\_\_\_  
Exceptional   X  

The date for the completion of all discovery (general and expert), as well as other relevant deadlines, is set forth in the Table of Appendix A.

c. The parties stipulate to the following modifications to the case management track.

(1) By October 19, 2016, the parties shall serve their Fed. R. Civ. P. 26 initial disclosures. At the same time the parties shall submit a proposed Protective Order to the Court.

(2) By October 19, 2016, Plaintiff shall serve its Disclosure of Asserted Claims and Preliminary Infringement Contentions as set forth in LR 103.1. At the same time, Plaintiff shall produce documents required by LR 103.2.

(3) By December 7, 2016, Defendant shall serve Preliminary Noninfringement Contentions and Invalidity Contentions as set forth in LR 103.3 by December 7, 2016. At the same time, Defendant shall produce documents required by LR 103.4.

(4) By January 11, 2017, the parties shall simultaneously exchange lists pursuant to LR 104.1.

(5) By January 18, 2017 the parties shall meet and confer pursuant to LR 104.1(b).

(6) By February 1, 2017, the parties shall simultaneously exchange a proposed construction of claim terms pursuant to LR 104.2. At the same time, the parties shall provide a preliminary identification of extrinsic evidence pursuant to LR 104.2(b).

(7) By February 15, 2017, the parties shall meet and confer pursuant to LR 104.2(c).

(8) By March 1, 2017, the parties shall complete and file a Joint Claim Construction Statement as required by LR 104.3. At the same time, a party that intends to offer an opinion on claim constructions from an expert shall serve an expert report containing the information required by Fed. R. Civ. P. 26(a)(2)(B).

(9) By March 29, 2017 the parties shall complete all discovery relating to claim construction, including depositions of lay and expert witnesses identified in each party's submission regarding proposed claim construction, pursuant to LR 104.4.

(10) By April 19, 2017, each party shall file its opening brief supporting its proposed claim construction.

(11) Within twenty-one days (21) after service of the opening brief, each party shall file a response to the opposing party's claim construction brief.

(12) By May 10, 2017, the parties shall meet and confer to determine whether the parties can agree on (a) the need for live testimony at the claim construction hearing; and (b) the order of presentation. If the parties can agree, the parties shall submit a joint motion setting forth such agreement within two (2) days of the meeting. If the parties cannot agree, the parties shall submit individual motions to the court regarding these, and any other matters for the Court's consideration at the claim construction hearing.

d. The parties agree that fact discovery and expert discovery, other than the claim construction discovery discussed above, shall be bifurcated.

(1) Fact discovery shall be completed by July 26, 2017.

(2) By August 23, 2017, each party shall disclose and serve burden-of-proof expert reports pursuant to LR 105.1(b).

(3) By September 13, 2017, each party shall disclose and serve non-burden of proof and rebuttal expert reports pursuant to LR 105.1(c) and (d).

(4) Expert discovery shall be completed by October 11, 2017.

e. The parties stipulate to the following modifications to the case management track as follows:

(1) Each party may take no more than fifteen (15) depositions of fact witnesses, and expert depositions as necessary.

(2) There shall be a maximum of 30 interrogatories by each party. Interrogatories that seek related information pertaining to multiple different items shall be considered as a single interrogatory. For example, an interrogatory that seeks sales information as it pertains to each of three different accused products shall be considered a single interrogatory.

Similarly, an interrogatory that seeks inventorship information as it pertains to each of three different patents shall be considered a single interrogatory.

(3) There shall be a maximum of 30 requests for admission by each party. Requests seeking admission pertaining to multiple different items shall be considered a single request for admission.

f. Supplementations under Rule 26(e) are due thirty days after the close of fact discovery, and thirty days after the close of expert discovery, and monthly thereafter until trial.

3. Mediation. The parties agree that the mediator shall be selected by mutual agreement on or before November 9, 2017. The exact date for mediation is to be set by the mediator after consultation with the parties. .

4. Preliminary Deposition Schedule. The parties agree to coordinate with regard to scheduling depositions. The parties will update this schedule at reasonable intervals.

5. Other items.

a. The parties should be allowed until November 15, 2016 to request leave to join additional parties or to amend pleadings. After this date, the court will consider, inter alia, whether the granting of leave would delay trial.

b. The parties agree to confer and cooperate with one another as issues arise with respect to the production of electronically stored information during the discovery period.

c. All dispositive motions should be filed thirty (30) days after the close of expert discovery.

d. The parties have already begun evaluating settlement, and are working together to determine whether an early resolution of this matter may be reached.

f. The parties have discussed special procedures for managing this case, including references of the case to a magistrate judge on consent of the parties under 28 U.S.C. § 636 (c), or appointment of a master. At this time, the parties do not agree to the trial jurisdiction of a magistrate judge.

g. The parties agree that documents shall be served on counsel via electronic means (e.g., via the Court's ETF system, via email, or via a secured file transfer protocol (FTP)), on or before 5:30 pm Eastern Time of the date required for service. If service is not possible via electronic means, then the serving party shall notify the receiving party at least three business days prior to the date required for service and arrange a means of service that assures the receiving party will receive materials on or before the date required for service. Service on counsel via electronic means shall constitute service pursuant to LR 5.2(b)(2) (for documents filed with the Court) and Federal Rule 5(b)(2)(E) (for all other documents required to be served. The additional time provided by Federal Rule 5(d) shall not apply even though the parties have consented to service by electronic means.

6. Trial. Trial of the action is expected to take approximately six (6) days. A jury trial has been demanded.

Date: September 12, 2016

Respectfully submitted,

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## Appendix A Case Management Schedule

<b>Local Rule</b>	<b>Event</b>	<b>Proposed Deadline</b>
26.1	26(a) initial disclosures from each party	October 19, 2016
26.2	Parties file Proposed Protective Order	October 19, 2016
103.1	Asserted Claims and Preliminary Infringement Contentions"	October 19, 2016
103.2	Documents made available for inspection and copying related to preliminary infringement contentions	October 19, 2016
	Deadline to request leave to join additional parties or to amend pleadings.	November 15, 2016
103.3	Service of Preliminary Non-infringement and Invalidity Contentions	December 7, 2016
103.4	Documents made available for inspection and copying related to noninfringement and invalidity contentions	December 7, 2016
104.1(a)	Simultaneous exchange of a list of claim terms to be construed by the Court	January 11, 2017
104.1(b)	Meet and confer to finalize claim construction list	January 18, 2017
	Meet and confer to select mediator	By November 9, 2017
104.2	Exchange a preliminary proposed construction of each claim term identified for claim construction; identify extrinsic evidence including witness testimony	February 1, 2017
104.2(c)	Meet and confer to finalize Joint Claim Construction Statement	February 15, 2017
104.3	Joint claim construction Statement	March 1, 2017

<b>Local Rule</b>	<b>Event</b>	<b>Proposed Deadline</b>
104.3(b)	Claim Construction expert report	March 1, 2017
104.4	Completion of all discovery relating to claim construction, including depositions of witnesses including experts	March 29, 2017
104.5(a)	Each party to serve and file an opening brief and evidence supporting claim construction	April 19, 2017
104.5(b)	Each party shall serve responsive brief on claim construction	21 days after opening brief
104.6	Meet and confer to determine if the parties can agree on proposed date for hearing, need for live testimony, and order of presentation	By May 10, 2017
104.6	Claim construction hearing	TBD based on the Court's calendar
26.1	Close of fact discovery	July 26, 2017
105.1	Initial expert witness disclosures on the issues bearing burden of proof	August 23, 2017
105.1	Each party may make rebuttal expert witness disclosures	September 13, 2017
105.2	Close of expert discovery	October 11, 2017